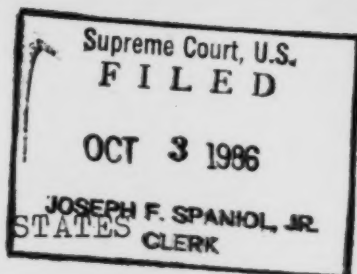


86-6670

NO.A-74

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1986



EARLENE POLYAK

Petitioner

VS

BUFORD EVANS & SONS

Respondent

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE UNITED STATES
FROM THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EARLENE POLYAK
3179 Middlefield Drove
Trenton, Michigan 48183
(313) 676-3364

34pp

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR
HARD COPY AT THE TIME OF FILMING.
IF AND WHEN A BETTER COPY CAN BE
OBTAINED, A NEW FICHE WILL BE
ISSUED.

QUESTIONS PRESENTED

I

Whether the pro se litigant was denied due process in the use of the amendment of Rule 5(a) of the Tennessee Rules of Appellate Procedure in violation of the Fifth Eight and Fourteenth Amendments.

II

Whether the pro se litigant was denied due process in the dismissal of all cases in the United States District Court without oral argument or any kind of hearing in violation of constitutional rights.

III

Whether the pro se litigant was denied due process with the dismissal of all cases in docket control in the Court of Appeals without ever being heard and in violation of civil and constitutional rights.

IV

Whether the pro se litigant should be compensated for all costs and irreparable damages and the loss of right to never be regained in real and personal property in this and joined cases.

TABLE OF CONTENTS

	<u>Page</u>
QUESTIONS PRESENTED.....	i
TABLE OF AUTHORITIES.....	ii
JOINED CASES.....	1
OPINIONS BELOW.....	2
JURISDICTION.....	2
CONSTITUTIONAL PROVISIONS.....	4
STATEMENT OF THE CASE.....	5
REASONS WRIT SHOULD ISSUE I.....	16
REASONS WRIT SHOULD ISSUE II.....	22
REASONS WRIT SHOULD ISSUE III.....	26

TABLE OF AUTHORITIES

	<u>Page</u>
<u>Canley v Cochran</u> , Fla. 1962 82 S. Ct.....	21
884 369 US 506 8 L Ed 2d 70	
<u>Detroit Police Lts. & Sgts Ass'n v</u>	27
<u>City of Detroit</u> , 597 F 2d at 568.	
<u>Ewing v Mytinger & Cassleberry</u> , 339 US.....	17
59(1950)	
<u>Johnson v Mississippi</u> , 421 US 213 222(1975)..	27
<u>Linsdey v Norbert</u> , 405 US 56(1972).....	17
<u>Mulland v Central Hanover Bank & Trust Co...</u>	17
339 US 306(1950)	
<u>Noel v Cain</u> , d38 F2d 633(6th Cir. 1976).....	27
<u>Romulus Community Schools</u> , 729 F2d 431(6th Cir. 24	
1984).	
<u>Smith v Winter</u> , 717 F2d 191 194(5th Cir. 1983).	27
<u>Tuny v Chio</u> , 273 US 510 523 (1927).....	20
<u>Wichita Light Co. v Public Utilities Co Kans.,</u> 24	
1922 43 S Ct. 51 260 US 67 124	



IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1986

EARLENE POLYAK

Petitioner

VS

BUFORD EVANS

Respondent

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE UNITED STATES
FROM THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Petitioner Earlene Polyak, prays that a writ of certiorari under 28 U.S.C. 1254(1) issue to review the order of the United States Court of Appeals for the Sixth Circuit, United States District Court, Middle District, and the Circuit Court of Lawrence County, Tennessee, in the above joined cases.¹

¹Cases No. 85-6135(D.C.1:85-0116) Earlene Polyak v Jim T. Hamilton and the Circuit Court of Lawrence County, joined by 28 U.S.C. 1441(c), in District Court, 85-6135(D.C.1:85-0120) Buford Evans v Earlene Polyak; 85-5199(D.C.1:85-0120) Earlene Polyak v Thomas Stack, Henry Henry & Stack; 3-85X-108 Earlene Polyak v William Boston, Boston Bates & Holt, and D.C. 1:86-0036.

Arising out of Cases No. 84-6090(D.C.1:84-0082, Frank Hulen et al., v Earlene Polyak; 85-5032/5101/5164(D.C. 1:84-0083) Earlene Polyak v Frank Hulen and Wilma Lesnansky; S.Ct. 85-1975, 85-1991, and 86-35. Also 86-182.

OPINIONS BELOW

The opinion of the Circuit Court of Lawrence County, Tennessee is set forth in Appendix A. This case was joined to Case No. 1:85-0116, pursuant to 28 U.S.C 1441(c) in the United States District Court Middle District, and is set forth in Appendix B. And the opinion of the United States Court of Appeals for the Sixth Circuit is set forth in Appendix C.

JURISDICTION

The order of the United States Court of Appeals was entered on March 7, 1986. The order denying Petition to to Rehear was denied on May 12, 1986. The order extending the time for filing writ of certiorari has been extended sixty(60) days through October 9, 1986, and this writ is being filed within this allotted time.

The jurisdiction of this Court is invoked pursuant to Article III, Sec. 2, which states that the judicial power shall extend to all cases of law and equity, between a State and citizens of another State; and between citizens of different States.

Earlene Polyak v Jim T. Hamilton and the Circuit Court of Lawrence County pursuant to 28 U.S.C 1441(c). Petitioner believes that this remand is reviewable pursuant to 28 U.S.C 1443(1)&(2), and 28 U.S.C 1447(d), and the Supreme Court of the United States has power to issue any writ necessary for review. She believes the jurisdiction is also invoked under 42 USC Sec. 1981, 1982, & 1983, 60.02 FRCivP and Equal Access to Justice 5 USC 504.

The federal and constitutional questions were timely raised. Survey of land conducted without Petitioner's knowledge or permission ... expenses for appraisal of landowner and court costs... as a part of "just compensation" required by the Fifth Amendment, 59 L Ed 257. She believes survey to sell property at Public Auction in violation of "taking clauses" of the Fifth and Fourteenth Amendments.

Petitioner believes that "An amendment to Rule 5(a) of the Tennessee Rules of Appellate Procedure effective August 15, 1985, deleted the requirement that a copy of the notice of appeal be filed with the appellate court" allows for discrimination against sex, race, pro se litigant, non-resident and violates the Fifth and Fourteenth Amendments.

CONSTITUTIONAL PROVISIONS

The pertinent portion of the Fifth Amendment provides as follows:

No ... person shall be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use without just compensation.

U.S. Const. Amend. V cl 3 & 4

The pertinent portion of the Eight Amendment provides as follows:

... nor excessive fines imposed, nor cruel and unusual punishment inflicted.

U.S. Const. Amen.VIII cl. 2&3,

The pertinent portion of the Fourteenth Amendment provides as follows:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, nor deny any person within its jurisdiction the equal protection of the laws.

U.S. Const. Amend.XIV.

28 USC 1443 Civil actions ... commenced in a State Court may be removed by defendant to District

(1) Against any person who is denied or cannot enforce in the Courts of such State a right under any law providing for equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof.

(2) For any act under color of authority depriving from any law providing for equal rights...

42 USC Sec. 1982 All citizens in the US shall have the same right in every State... to inherit... hold and convey real and personal property.

STATEMENT OF THE CASE

This is the fourth case dismissed without oral argument or any kind of hearing by the United States District Court, Middle District of Tennessee, and this dismissal of the pro se litigant's case has been affirmed by the United States Court of Appeals for the Sixth Circuit. Petitioner is not a lawyer and does not any knowledge of the legal profession, but believes that local political influence and prejudice prevents a female pro se litigant from being heard and receiving equal access to justice in the State Court.

Petitioner sought protection from these prejudices as a non-resident under diversity of citizenship in the United States District Court on the grounds that she has been denied civil and constitutional rights and due process in the State Court. She believes she has been denied these same constitutional rights in the District Court, which has been affirmed by the Court of Appeals, and in violation of the Fifth and Fourteenth Amendments to the Constitution.

This case arises out of Mr. Buford Evans & Son's, Real Estate Auctioners, invalid survey of Petitioner's property located in Lawrence County, Tennessee, and a hearing to sell this property conducted by the Honorable Jim Hamilton in Maury County, Columbia, Tennessee on July 29, 1983. She believes this hearing was unfair and unjust and that she was denied due process in civil and constitutional rights in the order to sell this property without any compensation and in violation of the "taking clauses" of the Fifth and Fourteenth Amendments. Petitioner sought relief from the United States District Court No. 1:84-0082.

This property was divided by settlement by agreement initiated by Frank Hulen and Wilma Lesnansky in 1976. as a result of this agreement Petitioner and her husband, Alex Polyak restored and maintained the house on their agreed partition at their own expense to this date, which is ten(10) years. Petitioner's husband is thought to belong to another race and a second generation american. In 1982, Frank Hulen stated that he wanted this property sold so his "kids could buy it," without offering any compensation for Petitioner's investm

They retained the attorney for the family since 1976, William Boston, Boston Bates & Holt, and he divided his lolyalties and filed a Complaint No. 1974 in the Chancery Court of Lawrence County to sell this property. Mr. Boston identified Petitioner as a non-resident on the complaint, which she believes resulted in prejudice in the State Courts against her. She believes that Mr. Boston may have been negilent or malfeasant in his protection of her civil and constitutional rights in the State Courts. Petitioner filed Complaint No. 10611, in the Circuit Court of Lawrence County, paid for Nonsuit on April 25, 1985, and later submitted Complaint No. 3:85X-108, which the Honorable Thomas A. Wiseman denied filing on November 20, 1985. Judge Wiseman disregarded second Comlaint No. 1:86-0036, submitted to District Court.

Petitioner relieved the first attorney, when she suspected that he was trying to help sell her property, and after he sent a Real Estate Auctioneer to appraise the lroperty for sale at Public Auction. Mr. Lee England stated, "it is my considered opinion as a practicing attorney of this Court that your property will be sold,..." (Chancery Court Lawrence County).

Petitioner was denied an extension of time to find another attorney by the Honorable Jim Hamilton. She retained Thomas Stack Henry Henry & Stack, Pulaski, Tennessee through lawyers referenced in Nashville. Mr. Stack stated that he wanted \$150,000 for research and to go against his friends in Lawrenceburg. He promised to defend the settlement by agreement and protect Petitioner's investment in Partition in Kind, which are legal and binding in Tennessee Statute and Case Law.

After only two weeks preparation Mr. Stack was ready to go to trial. Initially he had inferred that this trial would last all day, Petitioner assumed it would be a jury trial as she has never been to trial in Tennessee. She had informed Mr. Stack that she was suffering from heart failure, sensitive to heat and cold and other complications as a result of open-heart surgery, and semi-invalid.

Petitioner was already suffering from heat and a nationwide warning against heart patients exposing themselves to this 102 degree heat wave, and asked Mr. Stack to reschedule hearing on July 29, 1983. He stated that William Boston absolutely refused to schedule hearing.

Judge Hamilton verbally ordered this property sold when Mr Stack started to give summary, at a hearing conducted in a county other than complaint filed, within two hours, while the jury was out on another trial on July 29, 1983. Mr. Stack did not make motion for a new trial as Petitioner requested on August 1, 1983. He signed the order prepared by Boston Bates & Holt, and signed by William Boston against Petitioner's objections on October 19, 1986, to him and to Judge Hamilton as unconstitutional.

This order to sell property by Boston Bates & Holt describes the property as three distinctly different types of property, which can not be divided equally and supports sale. Petitioner compared Mr. Evans map of this property and the description in the order of sale. She found that Mr. Evans map is an invalid representation both to the aerial map and her knowledge of this property. Petitioner has been informed that Mr. Evans testified for Mr. Boston at property condemnation trials. This order to sell also stipulates that "the proceeds of of this sale after payment of all expenses incident to sale, including attorney fees will be divided equally between the heirs, except that the cost of

this case shall be deducted from defendant's share of said proceeds. This sale shall be conducted by Eulan Hooper..." She has learned that Mr. Hooper is on probation with Tennessee Real State Commission and Mr. Evans is not a licensed surveyor.

On December 19, 1983, Petitioner stated to Judge Hamilton that the first hearing was unfair and unjust and unconstitutional when she tried to argue Notice for a New Trial and Amendment or Alteration of judgment for just compensation(App.p.13) She had objected that trial of July 29, 1983, unfair unjust and unconstitutional and asked for a New Trial on August 1, 1983, but Mr. Stack disregarded. After assuming case, Petitioner found that Mr. Stack did not enter into the record, Memorandum Brief, Bills for Restoration of House, Evaluation of Property by Mr. Evans, or provide for a Transcript of the Proceedings.

Petitioner filed Complaint No.10612, against Mr Stack Henry Henry & Stack in the Circuit Court Lawrence County, paid for nonsuit on April 25, 1984 and later submitted complaint to District Court No 1:85-0125, which was joined to 1441(c). Judge allowed complaint filed on negligence and malfeasance 12/3/

Judge Wiseman disregards all motions, ^{or} three motions to schedule jury trial.

Mr. Evans alleges that Mr. Thomas Stack retained him to measure Petitioner's property. She had never seen Mr. Evans, and had informed Mr. Stack that another Real Estate Auctioneer had already evaluated property and suggested that Mr. Stack contact this man to save expense of evaluation for hearing on July 29, 1983. The first indication that Petitioner was to pay Mr. Evans was sometime in November, 1983, after Mr Stack signed order without any compensation for her expenses in restoration of house for retirement home, and prior to his dismissal on December 19, 1983. Petitioner had already started to suspect that she would pay for the division of the property into three parts for sale a Public Auction as is the custom, before putting all of the parts together for final sale, in addition to all of the costs of the case. Mr. Evans filed Complaint No. 10649 in the Circuit Court of Lawrence county on July 26, 1984.

The Honorable B.E Bryant was not in General Sessions Court on October 1, 1984, but a young man took his feet off the back of a bench and held

Court. He appeared to give deference to Mr. Evans and decided in his favor, but stated decision could be appealed in ten days.

When Petitioner tried to appeal decision Gerald Wilson, Circuit Court Clerk demanded that she come to Tennessee. After traveling all night on a bus, which caused pain and suffering, Mr. Wilson demanded that she get a copy of the deed to an additional forty(40) acres before he would allow appeal. Petitioner left with the understand that hearing would be held in April, 1985, session of Court.

Petitioner recieved a notice to appear in Lawrenceburg on December 26, 1984. She was acutel ill as a result of her heart condition and acute bronchitis and her physician's recommended that she go to Florida early as she goes there each winter for her health. Petitioner submitted Motion for a Continuance, but Judge Hamilton disregarded motion, physician statement, and Affidavit and ordered her to trial on December 26, 1984.

Petitioner finally submitted Motion for Judge Hamilton to disqualify himself as she believed that he had never ruled in her favor, disregarded all

motions, and was prejudiced toward to her, which altered his ability to use judicial discretion in the administration of justice.

Petitioner's husband and son drove with her in the back seat of the car on pillows from Florida to Lawrenceburg for trial in defense of second property. Petitioner did not expect to go to trial, was acutely ill, and too ill to even review notes. She did not have time to try to retain attorney and had to try to defend herself.

Judge Hamilton denied motion to disqualify himself, and all of Petitioner's objections. She stated that to cause her to appear at trial when acutely ill was "cruel and unusual punishment and in violation to the Eight Amendment. All of this information is in the transcript of the proceedings which should be in the United States District Court. Thomas Stack testified and presented confidential information at this trial against Petitioner(App.20)

Judge Hamilton disregarded motions and did not enter judgment for Petitioner to appeal on the basis that he influenced the jury and that this decision should be set aside. Finally, after Petitioner submitted application for permission to

appeal to the Court of Appeals in Tennessee, and then to the Supreme Court, it appears that Judge Hamilton was influenced to enter judgment, but he denied motion to forward records to Court of Appeals for appeal on November 7, 1985

On August 15, 1984, Rule 5 (a) was amended so that a copy of the notice of appeal was not filed with the Court of Appeals by the Tennessee Rules of Appellate Procedure. Petitioner believes that this ruling is unique to other states, and allows for discrimination to race, sex, pro se, non resident, and denies civil and constitutional rights of due process and in violation of the Fifth and Fourteenth Amendments and used by Judge and Clerk

On December 26, 1986, Petitioner checked the files in the Circuit Court of Lawrence County and found what appears to be a denial of her objection to the sale of her property in Chancery Court signed by Jim T. Hamilton on October 9, 1984, on Nonsuit No. 10611, against William Boston Boston Bates & Holt, and Nonsuit No 10612 against Thomas Stack Henry Henry & Stack. She has heard these lawyers carried political waters for Judge Hamilton in his election to Circuit Judge.

On November 8, 1985, Petitioner filed a Complaint No. 1:85-0116 against Jim T. Hamilton in his individual and judicial capacity and the Circuit Court of Lawrence County. She petitioned to remove Case involving Buford Evans and cross-claim of \$10475.00, No. 1:85-0120 to 1:85-0116 pursuant to 28 U.S.C. 1441(c). She petitioned to join District Court No. 3:85X-108 and District Case No. 1:85-0120 to 1:85-0116 pursuant to 28 U.S.C. 1441(c). Judge Wiseman immediately dismissed Case No 1:85-0116 and enjoined Petitioner from filing further cases involving the property in Lawrence County, on November 13, 1985.

Judge Wiseman dismissed Buford Evans No. 1:85-0120 and remanded it back to the State Court. The Court of Appeals dismissed this case before allowing appeal under 28 U.S.C. 1443, No. 85-6134, but the supervisor allowed Petition to Rehear, and this is the subject of this writ of certiorari.

The case against lawyers No. 3:85X-108, was denied filing by Judge Wiseman and complaint 1:86-0036 was submitted and is closed in District Court. Case No. 1:85-0125 has been answered and Petitioner has submitted three motions to schedule jury trial.

REASONS WRIT SHOULD ISSUE

- I. The amendment of Rule 5(a) of the Tennessee Rules of Appellate Procedure denies due process and deprives the pro se litigant of an interest in real and personal property and is in conflict with applicable decisions of the Supreme Court

The amendment of Rule 5(a) of the Tennessee Rules of Appellate procedure deletes the requirement that a copy of the notice of appeal be filed with the Court of Appeals from the lower Courts. Petitioner believes that the amendment of this rule allows for discrimination, as to who is allowed to appeal, against sex, race, nonresident, pro se litigant by placing the power of the State in the Clerk or Judge of the lower Court. She contends that this ruling has been used to deny her due process and deprive the pro se litigant of civil and constitutional rights of interest in real and personal property (App.p.30)

An amendment to Rule 5(a) of the Tennessee Rules of Appellate Procedure effective August 15, 1984, deleted the requirement that a copy of the notice of appeal be filed with the clerk of the appellate court.

On October 1, 1984, the Circuit Court Clerk closed this Case 10647, Buford Evans v Earlene Polyak, when notice of appeal transcript and issues were properly before the Circuit Court of Lawrence

County to appeal decision of December 26, 1984, and get judgment set aside (App. p: 31). Judge Hamilton denied Restraining Order against sale of property on October 17, 1985, and motion to Forward Record on Appeal on November 7, 1985. The denial to forward record to Court of Appeals involving real and personal property when appeal as a right properly before the Court is denial of due process and deprives pro se of interest is in conflict with applicable rulings of the Supreme Court.

The Supreme Court has... recognized that due process requirements are implicated whenever the enforcement of a power of government is employed to deprive an individual of an interest to deprived from common law, in peaceful possession, Lindsey v Norbert, 405 US 56(1972) or use, Mulland v Central Hanover Bank & Trust Co., of real or personal property... whether such property is being taken to meet the need of government or the private individual, Ewing v Mytinger & Casselberry, 339 US 59(1950).

Petitioner contends that she was denied fair and just hearings and due process requirements involving real and personal property conducted by Judge Hamilton in State Courts in the deprivation of an interest this property. She complained to attorney for the defense, Thomas Stack of an unfair and unjust hearing on August 1, within three days after Judge Hamilton ordered her property sold on

July 29, 1983. Petitioner stated again before Court room full of people and Judge Hamilton that she received an unjust and unfair hearing and asked for a New Trial on December 19, 1983. She premised Motion for a New Trial on (1) Petitioner was taken across County lines for trial which is against Tennessee State law; (2) Wilma Lesnansky signed complaint but did not testify and was not present in the Court; (3) valuable evidence was withheld from the trial; (4) Petitioner was forced to attend trial while ill; (5) Petitioner's case was not given adequate time and consideration by the Court due to the fact that hearing held within two hours while the jury was out on another trial.

The Motion to alter or amend judgement of July 29, 1983 was predicated on the failure of the Court to award monies for restoration and maintenance of retirement home since 1976, which was assessed at \$1,950. As a result of restoration it was assessed at \$8,100.00 in 1982 (see App. p 9).

On December 20, 1983, Judge Hamilton signed unappealable judgment prepared by Boston Bates & Holt, signed by Charles Holt. On January 10, 1984, Judge Hamilton signed order dismissing Thomas Stack

Henry Henry & Stack, which was also signed by William Boston. The Court of Appeals issued order stating that order should have been appealed instead of judgment on April 26, 1984(App. p. 13, 14, 15). Judge Hamilton instructed Petitioner to appeal judgment of December 20, 1983.

On December 26, 1986, Petitioner found what appeared to be a dismissal of her objection to the sale of her property in Chancery Court Case No. 1974, on Nonsuit Nos 10611, and 10612 in the Circuit Court of Lawrence County, signed by Judge Hamilton on October 9, 1984(see App. 25,26, 27). This discovery was made prior to Petitioner's application for permission to appeal to the Court of Appeals, while motion for nonsuit was pending in Circuit Court. Petitioner paid nonsuit on April 25, 1986.

The Circuit Court Clerk Gerald Wilson demanded that Petitioner bring a copy of the deed to an additional forty(40) acres of property in Lawrence County before he would allow appeal to Buford Evans case, and trial was to be scheduled during April 1985 session of Court.

Petitioner was again denied due process in conflict with applicable decision of the Supreme

Court, Lindsey v Norbit, supra. When she was notified to appear before Judge Hamilton on December 26, 1985. She did not expect to go to Court until April 1985 and did not get to look for a lawyer. Petitioner was acutely ill and two physicians recommended that she go on early to Florida. She submitted Motion for a continuance, which Judge Hamilton disregarded. Finally Petitioner submitted Motion for Judge Hamilton to disqualify himself from her case as she felt that he had denied all motions and never ruled in her favor, and she believed that his prejudice toward her prevented his administration of justice in any case involving her and denying due process civil and constitutional in violation of the Fifth and Fourteenth Amendment.

"the assurance of a fair hearing before a neutral magistrate " who has no direct personal, substantial interest in reaching a conclusion against him in his case. Tuny v. Ohio, 273 US 510523(1927).

Mr. Buford Evans entered upon Petitioner's property Case No. 1947, without her knowledge or permission, which had already been evaluated and this information was given to Thomas Stack. Mr. Evans alleges that Mr. Stack retained for this service, it follows that his law suit should have been against

le Thomas Stack. Mr Stack testified that he retained
98 Mr. Evans as a surveyor, but he does not have a
5, surveyor's license, and he admitted on October 1,
as 1, 1984 that his map is not scale. Petitioner is of
the opinion that this map will be used to sell the
a property at Public Auction. She releaved Mr. Stack
on December 19, 1984, after many incidents in which
sne believed that he was not representing her best
interest. Petitioner learned that Mr. Stack did not
enter memorandum brief, bills for restoration of
retirement home, evaluation of property, which Mr
Evans sues for survey, or provide a transcript of
the proceedings for the record. She believes that
Mr. Stack Henry Henry & Stack failed to protect her
civil and constitutional rights.

Claim of lack of assistance of trial counsel
presented important constitutional question
warranting the granting of certiorari. Canley
v Cochran, Fla. 1962 82 S Ct. 884 369 US 506
8 L Ed 2d 70

At the trial on December 26, 1984, Judge Hamilton
refused to disqualify himself, and Petitioner objected
again to being brought in the back of a car by her
husband to try to defend another forty (40) acres
o property. She stated that his was harassment cruel
and unusual punishment in violation of the Eight

Amendments(See App P. 21,22,23 from transcript of proceedings). Judge Hamilton came to Mr. Stack's defense,allowed him to testify against Petitioner, and enter confidential information before the jury

On November 8, 1985, filed complaint grounded in the denial of civil and constitutional rights against Jim T. Hamilton and the Circuit Court of Lawrence County in the United States District Court No. 1:85-0116, and joined counterclaim for \$10475.00 against Buford Evans & Sons 1:85-0120 under 1441(c) and joined complaint against Thomas Stack, Henry & Stack 1:85-0125, and William Boston Boston Bates & Holt 3:85X-108. She believes that the civil and constitutional questions were properly and timely raised in the State Court to give jurisdiction for review by writ of certiorari by the Supreme Court.

II. The United States District Court denies pro se litigant due process civil and constitutional rights when dismissing cases without oral argument and any kind of hearing and remands case back to State

The District Court denies pro se litigant due process civil and constitutional rights in dismissing cases without being heard and the departure is so far sanctioned by the Court of Appeals to call for exercise of Supreme Court power of supervision.

The Honorable Thomas A Wiseman, dismissed the complaint against Jim Hamilton et al, without oral argument or any kind of hearing within five days on the Court's own motion and enjoined Petitioner from filing further cases on November 13, 1985; (See App p. 36). Petitioner joined this Case No 1:85-0120, Buford Evans v Earlene Polyak to the above Case No. 1:85-0116, under 28 U.S.C 1441(c). (See App. p. 35). Judge Wiseman dismissed this case within fourteen (14) days without oral argument or any kind of hearing and remanded it back to the State on November 26, 1986. Contrary to Clerk's statements in order, petition contained all copies denied, it is backed with "good surety" by her on October 10, 1984, and signed by her husband Alex Polyak on December 26, 1984, in addition Circuit Court Clerk Gerald Wilson demanded a copy of deed to (40) additional acres owned by Petitioner in Tennessee, and a letter to Mr Wilson has been sent to the Circuit Court, ^{for record} but it is disregarded as all of her motions. If Judge Hamilton denied Petitioner appeal by denial of forwarding records, it follows that they would not verify petition about unfair second unfair trial.

Petitioner believes District Court has

jurisdiction through 1441(c).

district court could not have relied on statute providing for remand whenever a separate and independently removable claim or cause of action, where not only all claims arise from the same acts of the defendants, but also sought redress of action, 28 USC 1441(c) Romulus Community Schools, 729 F2d 431(6th Cir 1984).

Petitioner believes that Mr. Evans survey of property already evaluated without Petitioner's knowledge or permission and that this invalid map will be used to sell her property at Public Auction involves 28 USC 1447(d) and 60.02 FRCivP and that District Court has jurisdiction in diversity.

The jurisdiction of the district court arising from diverse citizenship extends to the entire suit and to every question state or federal in its determination. Wichita Light Co. v Public Utilities Co. Kans. 1922 43 S Ct. 51 260 U S 67.124.

Judge Wiseman dismissed case against Jim Hamilton and remanded case joined by 1441(c), which involved the trial of Evans and Mr. Stack testified against Petitioner. Judge Hamilton denied forwarding of record to get Judgment set aside in trial he held

And some of the cases imply that permitting remand of pendent state claims denies defendant the protection of the Removal Statute and encourages manipulative dismissals. In Re: Greyhound Lines Inc. 598 F2 d 884.

Judge Wiseman denied filing of Complaint No.

3:85X-108 against William Boston Boston Bates & Holt which was joined to 1441(c). He disregarded filing second against William Boston Boston Bates & Holt and admitted that the order enjoining Petitioner from filing cases in the District Court No. 1:85-0116 (Hamilton et al.), on November 13, 1985 resulted from complaint against members of the District Court, Columbia Tennessee, in a letter on April 30, 1986(Ex. 30).

... previous order of November 13, 1985, whereby Mrs Polyak was enjoined from filing any further suits in this Court arising out of the partition sale of her property in Lawrence County. That order was entered because of the previous filings of Mrs. Polyak against various members in this Court...

This was the third case filed in the District Court No. 1:85-0116, and Judge Wiseman must be referring to State Courts. Petitioner has tried to appeal this order and the order issued on May 2, 1986, in which Judge Wiseman again enjoined her from filing cases in the District Court. She believes Case No 85-6534, Buford Evans & Sons v Earlene Polyak properly before the District Court, and that the Court of Appeals has so far sanctioned the departure of the District Court to call for exercise of the Supreme Court's power of supervision.

III. The united States Court of Appeals denied pro se ligitant due process civil and constitutional rights in remanding case back to the State Court by affirming dismissal in District Court.

The Court of Appeals remanded Case No. 85-613 (D.C. 1:85-0120) Buford Evans v Earlene Polyak by dismissing appeal from District Court and neither Court heard oral argument or any kind of hearing. This case was dismissed in docket control without motion in the Court of Appeals after conversation between Mrs. Yvonne Henderson, Case Supervisor, and Mr. Evan's attorney Larry Brandon(See App.p.43).

Although Mrs. Henderson allowed Petition to Rehear, it does not appear be considered in the second dismissal by docket control(See App.p. 43-45). All of pro se ligitant's cases involving the denial of due process civil and constitutional rights of property interest have been dismissed in District Court and dismissed again in docket control in the Court of Appeals.

This case was appealed in Petition to Rehear under 28 U.S C. 1443, and grounded in the denial of civil and constitutional rights in violation of Fifth and Fourteenth Amendments and 28 U.S.1447 as a result of Judge Wiseman's accusations(App p.47).

... except that an order remanding a case to the State Court from which it was removed pursuant to Sec. 1443 shall be reviewable by appeal or otherwise.

And supported by local political influence and prejudice, which meets the two pronged test under 1443.(1)(2), and cases Johnson v Mississippi, 421 US 213 222(1975), Smith v Winter, 717 F 2d 191 194(5th Cir. 1983. Appellant contends Mr. Evans map invalid representation of property and does not conform to initial division between co-tenants(See App. p. 10, 11, 12), and it appears to have been used by the State Trial Judge in his order to sell property(See App. p. 7).Detroit Police Lts. & Sgts. Ass'n v City of Detroit, 597 F2dat 568. It also appears that Judge Hmlton used the amended Rule 5(a) to deny forwarding the record of the trial he conducted in this case as law of State(App p. 31). And removal is proper under 1443(2) and completes two pronged test, and 1447(d) Noel v Cain, d38 F 2d 633(6th Cir. 1976). Petitioner contends that invalid map which may be used for sale of Property at Public Auction may be cause under to waive any time requirements with diversity of citizenship and original jurisdiction joined by 1441(c) to 1:85-0116.

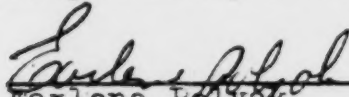
Mr. Evans entered upon Petitioner's property without her knowledge or permission. She believes that Mr. Evans' law suit should have been lodged against Thomas Stack, Henry Henry & Stack. Petitioner believes she has been unjustly obligated to defend her right to her properties as a result of Mr. Evans allegations in the Lawrence County Circuit Court, United States District Court and the United States Court of Appeals, and ~~in~~ resulting obligation to defend her right as a pro se litigant she has been denied due process civil and constitutional rights and in violation of the Fifth Eighth and Fourteenth Amendments.^{2(a)} Petitioner contends that counter-claim of \$10475.00, and all costs of these appeals should be paid by Mr. Evans.

CONCLUSION

Petitioner prays that this Honorable Court issue writ of certiorari to review this and related cases and award just compensation for irreparable damages and the loss of a right to never be regained in her retirement home. And in the alternative she prays all judgments and orders be set aside and that orders issue for New Jury Trials.

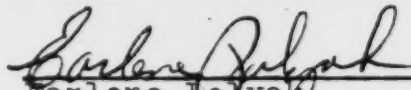
On the 29th day of September, 1986.

Respectfully submitted,


Earlene Polyak
3179 Middlefield Drive
Trenton, Michigan 48183
(313) 676-3364

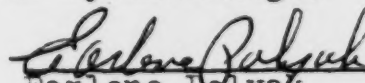
CERTIFICATE OF SERVICE

I certify that a true and exact copy of this pleading has been mailed by First Class Mail postage prepaid to Mr. Larry Brandon, P.O.Box 5065 Uptown Station, Mufreesboro, Tennessee 37133, and all parties of interest in this pleading.

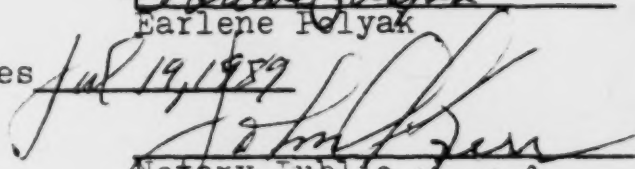

Earlene Polyak

STATE OF MICHIGAN
COUNTY OF WAYNE

I certify that the above information is true and correct to the best of my knowledge.


Earlene Polyak

My comission expires Jul 19, 1989


Notary Public

JOHN C. KERR

² but Supreme Court may review an action of Circuit Court of Appeals dirceting a remand to a state court, and Supreme's Courts jurisdiction is not defeated because mandate of Circuit Court of Appeals has issued. Aetne Causality & Sur. Co. v Flowers, Tenn 1947
67 S Ct. 798 330 US 464 91 L Ed 1024.

86-667

NO. A-74

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1986

Supreme Court, U.S.
FILED

OCT 3 1986

JOSEPH F. SPANIOLO, JR.
CLERK

EARLENE POLYAK

Petitioner

VS

BUFORD EVANS & SONS

Respondent

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE UNITED STATES
FROM THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

APPENDIX

EARLENE POLYAK
3179 Middlefield Drive
Trenton, Michigan 48183
(313) 676-3364

54/1986

TABLE OF CONTENTS

	<u>Page</u>
PENDIX A.....	1
PENDIX B.....	33
PENDIX C.....	40

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR
HARD COPY AT THE TIME OF FILMING.
IF AND WHEN A BETTER COPY CAN BE
OBTAINED, A NEW FICHE WILL BE
ISSUED.

APPENDIX A

In the Circuit Court of Lawrence County,
Tennessee.

Buford Evans & Sons , Plaintiff v Earlene
Polyak, Defendant, Case No. 10647.

Hearing in General Secessions Court on October 1,
1984, appealed to Circuit Court on October 10, 1984.
Circuit Court Clerk refused to allow appeal until
Defendant went to County Court Clerk and brought
back a copy of the deed to additional forty (40)
acres of land. Jury trial scheduled for April
session of Court in 1985.

Trial set for December 26, 1984, by the
Honorable Jim Hamilton.

Presiding: Jim Hamilton

Motion for forty-five (45) day continuance
denied on December 26, 1984.

Motion for Judge Hamilton to disqualify him-
self denied on December 26, 1984.

Judgment entered on August 7, 1985.

Amended Judgment signed by Judge Hamilton on
August 22, 1985.

Judgment and Amended Judgment appealed to the
Court of Appeals of Tennessee, on August 29, 1985.

Copy of notice of appeal returned with letter stating Rule 5(a) amended on August 15, 1984, and no longer to send copy of notice of appeal to the Court of Appeals, on September 9, 1984.

Motion to forward records to the Court of Appeals for appeal submitted to Circuit Court on November 1, 1984.

Received letter from Circuit Court Clerk, Gerald Wilson on November 2, 1984, case closed.

Motion to forward records to the Court of Appeals denied on November 7, 1984, signed by J. T. Hamilton Circuit Judge.

FACTUAL BACKGROUND

This case arises out of the plan to take property already settled by agreement in 1976, initiated by Frank Hulen and Wilma Lesnansky v Earlene Polyak, Chancery Court Case No. 1974, located in the 14th Civil District of Lawrence County, Tennessee. As a result of this settlement by agreement, Earlene Polyak and her husband, Alex Polyak has restored and maintained the house on the agreed partition at their own expense for a retirement home to this date.

In 1982, Frank Hulen stated that he wanted the property sold so his kids could buy it, and Wilma Lesnansky joined him. They did not offer any compensation for restoration and investment in retirement home before taking the property to be sold at Public Auction. They retained William Boston, Boston Bates & Holt, who divided his loyalties and filed a complaint to sell property.

Defendant was obligated to retain Thomas Stack, Henry Henry & Stack, who promised to defend her right to her retirement home, restoration, and investment in the property. Mr. Stack stated that he needed \$1500.00 for research and to go against his friends in Lawrenceburg. He was able to get the tentative hearing scheduled by William Boston for July 15, 1983, scheduled for July 29, 1983. Prior to retaining Mr. Stack, the Honorable Jim Hamilton disregarded Defendant's request for a thirty day extension to allow her to find an attorney. Judge Hamilton sent a stating that Defendant should "let him know who would represent her at this hearing.

Plaintiff, Mr. Buford Evans alleges that Mr. Stack retained him to survey Defendant's property.

did not give Mr. Evans permission to survey property, and her first knowledge of this was when Mr. Stack stated at the initial sitting with him in the Courthouse in Pulaski, Missouri, which lasted about twenty minutes, that Evans was out measuring the farm on July 28, 1983.

Defendant was very ill as a result of traveling in Michigan in heat wave of 102 degrees against a wide warning against heart patients being exposed, and had asked for hearing to be rescheduled. Called again on the morning of July 29, 1983, hearing to be rescheduled to allow her to testify but Mr. Stack stated that "Mr. Boston" refused to reschedule hearing."

The honorable Jim Hamilton ordered property within two hours, while jury out on another day. Hearing was conducted in Maury County, when plaintiff filed in Lawrence, across lines and against Missouri law. Complainant Wilma Lesnansky did not testify, or come to hearing, and information at settlement by agreement withheld from record. Plaintiff's had agreement with Mr. Boston about court costs not to exceed \$500. and deny encumbrance

CHANCERY COURT OF LAWRENCE COUNTY, TENNESSEE

FRANK HULEN and
WILMA LESNANSKY,
Citizens and
residents of Lawrence
County, Tennessee
PLAINTIFFS

VS

CIVIL ACTION NO. 1974

EARLINE POLYAK, a
non-resident presently
residing at 3179 Middlefield Drive
Trenton, Michigan 48163
DEFENDANT

C O M P L A I N T

Plaintiffs would respectfully state and
show this Honorable Court the following:

That Rena Ann Hulen died intestate on or
about the 9th day of January 1976: that at
the time of her death she was a some 84 years
of age and a permnate resident of Lawrence
County, Tennessee; and that she died seized
and possed of a tract of land situated, lying
and being in the 14th Civil District of
Lawrence County Tennessee... and there are
no known encumberancesos of the date of her
death on said tract known to plaintiffs, and
if there are nay encumberances upon said tract
since her death , such is unknown to the plain-
tiffs.

.....
THIS IS THE FIRST APPLICATION FOR EXTRAORDINARY
PROCESS IN THIS CAUSE.

Signed Frank Hulen

Frank Hulen

Signed Wilma Lesnansky

Wilma Lesnansky

Sworn and suscribed before me
this 19 day of April 1983.

Signed Gail Hughes N.P.

My comission expires: 1-11-86

WILLIAM BOSTON
BOSTON BATES & HOLT

ATTORNEYS FOR PLAINTIFFS
235 Waterloo Street
P.O. Box 357
Lawrenceburg, Tennessee 38464

- 3 -

We absolutely _____ land for the Cst of
Imp not to Exceed 500/00

Signed Frank Hulen
Signed William Boston

It appears from the above agreement on the
bottom of the complaint page 3, that the improvements
on the property by Defendant would not exceed \$500
the Plaintiffs.

The order to sell the property was prepared
by William Boston, Boston, Bates & Holt, and signed
by William Boston, Thomas Stack and Judge Hamilton.
Defendant called Judge Hamilton at his office in
Mt. Pleasant, Tennessee on 19, 1983, and
complained that she did not agree to Mr. Stack
signing this order, but Judge Hamilton disregarded
her objections and signed order on the same day.

The taxpayer's copy of 1983, Property Receipt
No. 500-83-07353, Mrs. Rena Ann Hulen, Summertown,
Tennessee, shows an improved value of \$8100.00.
Defendant is the only person who has invested any
improvements in this property. This hearing was
almost secret and it appears facts are covered.

as follows:

- 7 -

CHANCERY COURT OF LAWRENCE COUNTY, TENNESSEE

FRANK HULEN ET AL

Plaintiffs

VS

CIVIL ACTION NO. 1974

EARLENE POLYAK

Defendant

ORDER

This cause came on to be heard this the 29th day of July 1983, before the Honorable Jim T. Hamilton, Judge Part II of the Circuit and Chancery Court in Lawrence County, Tennessee, while holding Chancery Court for Lawrence County, Tennessee, upon complaint hereto filed in this cause, the answer thereto, the testimony of witness in open Court, and the entire record in this cause, whereas at the conclusion of which defendant's attorneys were granted the privilege of presenting a brief to the Court within a reasonable time, after the conclusion of which the court found in memo dated August 11, 1983, the following findings:

1. That the property in question consists of approximately 40 acres, which belonged to the parties mother.

2. That the property cannot be partitioned in kind as there are three distinctly different types of property within the 40 acres. One portion of the property includes the home place, well and barn, another portion contains woods and is a low lying wet area, and the remaining portion consists of level flat land which is suitable for raising crops.

3. The Court finds there is noway to divide this land equally between these heirs, without selling said property and dividing the proceeds.

4. The proceeds of this sale after payment of all expenses incident to sale, including attorney fees will be divided equally between the heirs, except that the cost of this case shall be deducted from the defendant's share of said proceeds.

5. This sale shall be conducted by Evaln Hooper unless the parties agree on another real estate company.

All of which is therefore, ORDERED AND DECREED
by the Court.

This the 19th day of Oct. 1983.

Signed Jim T. Hamilton
Jim T. Hamilton, Circuit

APPROVED FOR ENTRY:
JACKSON BATES & HOLT

Signed William Boston
ATTORNEYS FOR PLAINTIFFS
Signed Thomas Stack
ATTORNEY FOR DEFENDANT

On December 19, 1983, Defendant raised the constitutional question by stating that she had been subjected to an unjust and unfair hearing and demanded a New Trial and submitted motion for amendment or alteration of judgment to allow compensation for monies before the distribution of the proceeds for the restoration and maintenance of retirement home. Defendant has suspected for some time that Mr. Stack was not representing her best interest and relieved him of his services.

After Defendant relieved Mr. Stack of his services she found that her suspicions were well founded she learned that he did not enter the memorandum brief, evaluation of the property prepared by Mr. Evans, bills for the restoration and maintenance of the property since 1976, and secure transcript of the proceedings. She found the

evaluation prepared by Mr. Evans with three parts
of equal value:

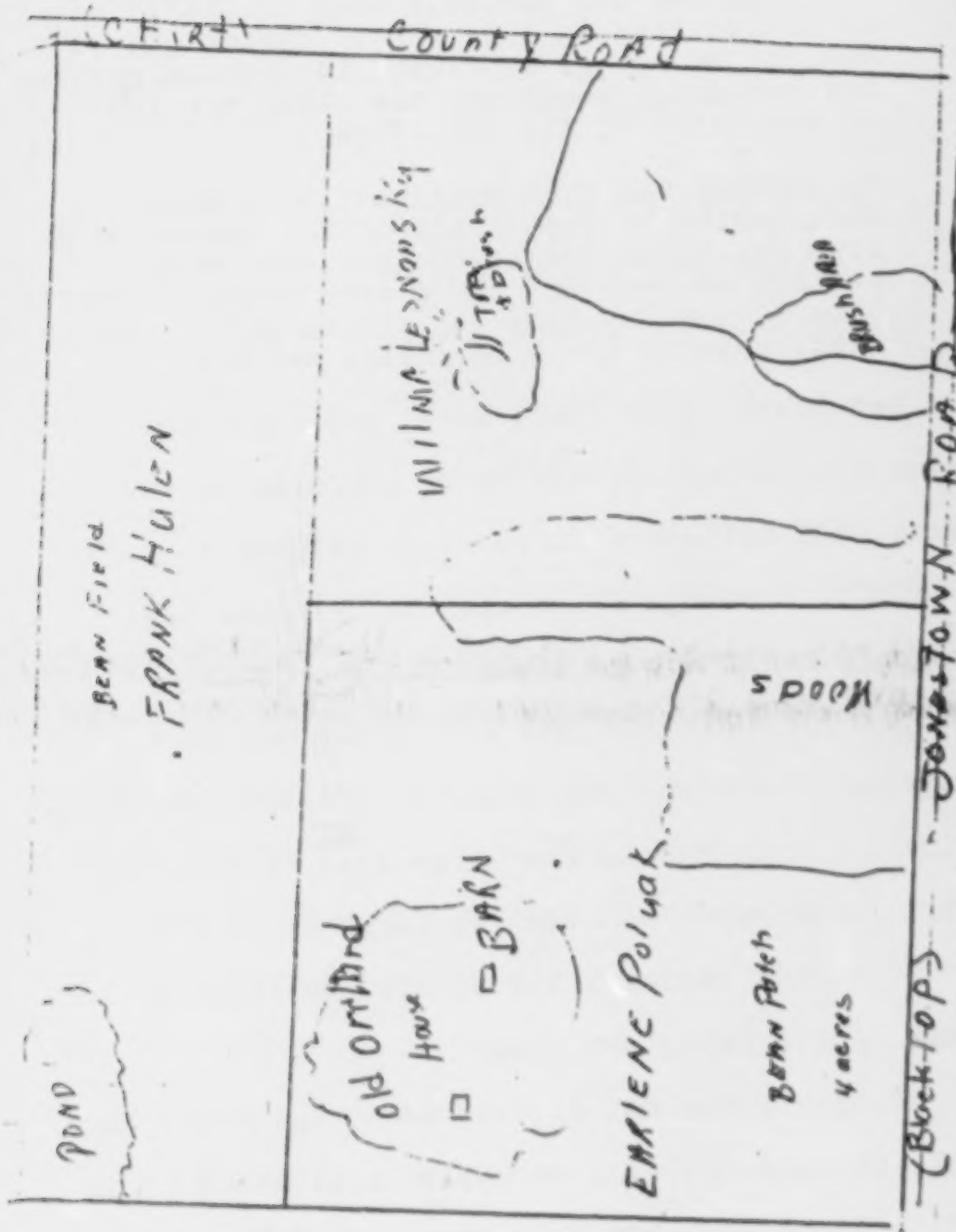
Total land value.....\$33,690.00
Total value of dwelling..... 6,330.00

The simplest and probably most equitable way
to divide land in kind was to divide the land
and the buildings separate. The person getting
the buildings would pay the other two $\frac{1}{3}$
of the value of the buildings.

TO RESTORE THE HOME would not be a major
undertaking to remove all of the inside paper
from the walls and sheet rock over wood
ceiling ir repaper. The floors would be sanded
into a beatiful floor or place carpet over
them. Repaint the wood inside and out.

Defendant also found ariel map and a hand
drawn map, which appears to be prepared by Mr.
Evans. She noticed a correlation between item No.
2, of the findings supporting the reasons the
property could not be divided in the Order of
October 19, 1983, and the hand drawn map of the
property. Defendant has observed property and finds
third portion (3) has one large area of tree and
large brush area, and another large brush area
around middle terrace. All of area is terraced to
rain and created wet area.

Property was not divided as to agreement and
could be used for sale at Public Auction as it is
aston to divide then sell as a whole. Maps follow:



Acres and value of land in each tract

over \$2.00

under 2.00

under \$7.00

13.26 AC
\$11,249.00

Bean Field



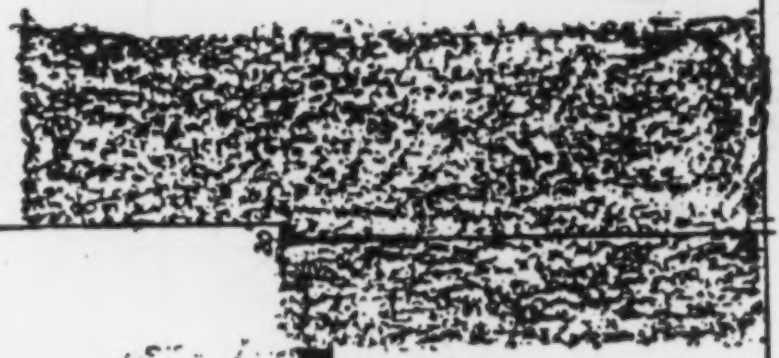
Bean Field

TRACT ①

495'

15.57 AC
\$11,223.00

Bean Field



TRACT ②

589'

12.47 AC
\$11,223.00

Bean Field

TRACT ③

464'

Judge Hamilton overruled Defand's motion for a new trial and Amendment or Alteration of judgment to award Defendant from the proceeds prior to distribution for the restoration and maintenance of retirement home on December 19, 1983. Judge Hamilron instructed Defendant to appeal his dicision within ninety(90) days, and instructed Mr. Boston to prepare the judgment. The judgment prepared by Boston Bates & Holt and signed by Charles Holt has been deemed unappealable by the Court of Appeals of Tennessee. It is as follows:

JUDGMENT

This cause came on to be heard on the 19th day of December, 1983, before the Honorable Jim T. Hamilton, Judge, upon this day filed by the defendant, personally and in her own behalf, statement and argument by the defendant Earlene Polyak, in her own behalf, from all of which the Court finds no merit, and said Motion is here and now overruled in its entirety. Judgment is signed by Charles Holt, Boston Bates & Holt and Judge Hamilton and entered on December 20, 1983.

ORDER

This cause came to be heard on this the 19th day of December 1983, before the Honorable Jim T. Hamilton, Judge Part II of the Circuit and Chancery Courts of Lawrence County, Tennessee on the motion for a new trial of amendment of of judgment of the order previously filed herin by the Defendant Earlene Polyak by and through her counsel of record, Henry Henry & Stack, and upon the oral motion of Earlene Polyak to be allowed to represent pro se, and that Henry Henry & Stack be relieved as counsel and further aforementioned motion not be

not be heard in this Court. IT IS THEREFORE ORDERED Henry Henry & Stack are relieved as counsel in this cause and that aforementioned Motion for a New Trial etc. be and here by dismissed. This order was signed by Thomas Stack William Boston and Judge Hamilton and entered on January 10, 1984.

Defendant found the above order in the materials Mr. Stack returned. She heard Judge Hamilton instruct Mr. Stack that the Court would prepare an order allowing him to withdraw from Defendant's case before she argued her own motions before Judge Hamilton on December 19, 1984. Mr. Stack prepared this order without Defendant's knowledge after his dismissal from her case. Defendant argued order invalid, but the Court of Appeals of Tennessee maintained that his order, instead of judgment should have been appealed.

On April 26, 1984, dismissing appeal and appeal has never been heard in this case. The pertinent part of order follows:

And it appearing from the record that appellant's motion to alter and amend was heard on December 19, 1983, that on January 3, 1984, appellant filed a notice of appeal from the final judgment entered on December 20, 1983, but the order overruling appellant's motion to alter or amend was not entered until January 10, 1984.

... and it appearing that the judgment from which appeal was sought is not a final judgment appealable as a right under TRAP Rule 3 in that said judgment orders sale of

property but does not confirm any sale or transfer title.

IT IS THEREFORE ORDERED that this appeal be and hereby dismissed at the cost to the appellant without prejudice to review of any and all actions of the Trial court by appeal prosecuted from final judgment.

Defendant believes that this order allowing the sale of her retirement home without any compensation for the restoration and maintenance unconstitutionally deprives her of her property interest without due process and just compensation. And that she suffered irreparable damage and the loss of a right to never be regained to her property.

On October 1, 1984, Defendant appeared in the Circuit Court of Lawrence County to defend her right to her property. Mr. Evans sued for the survey which was conducted without her knowledge or permission. The hand drawn map, which showed a correlation to the order to sell, appeared to be a map that could be used to sell the property at Public Auction, as it is the custom to sell in parts and then as a whole.

Defendant was not given any compensation for the restoration and maintenance of her retirement

home, the Trial Judge ordered her to pay cost of case for Plaintiffs without just compensation the Court of Appeals denied due process and just compensation, and Defendant assumed that she was further denied right to money form property by paying for the survey of this property for sale at Public Auction.

The Honorable B. E. Bryant was not in Court on October 1, 1984, but a young gentleman took his feet off of the back of a bench and conducted Court. He addressed Mr. Evans with deference and found in his favor. But stated that the order to pay cost of survey could be appealed within 10 days.

When Defendant tried to appeal with Notice of Appeal and check for \$600.00 Bond by mail, the Circuit Court Clerk, Gerald Wilson demanded that she appeal in person, and she rode a bus all night to meet the deadline, which caused pain and suffering with her health problems. Mr. Wilson refused to allow Defendant to appeal until she went to the County Court Clerk and brought back a copy of the deed to and additional forty (40) acres of property, after she admitted to

him that she did own more property in Lawrence County. Defendant scheduled jury trial, which was to be held in April session of Court in 1985.

On November 2, 1984, Defendant received a letter from the Circuit Court Clerk stating that Judge Hamilton scheduled trial for December 26, 1984, which was followed by a telephone call. Defendant stated that she was acutely ill with heart and bronchial condition and was preparing request for continuance as physician had already recommended that she go on to Florida in hopes health would improve in warm climate. She requested continuance on December 7, 1984, with affidavit and physician's statement. Request for continuance:

IN THE CIRCUIT COURT
FOR
LAWRENCE COUNTY, TENNESSEE

BUFORD EVANS
Plaintiff

VS

Appeal No. 10647
General Sessions No. 7196

EARLENE POLYAK
Defendant

REQUEST FOR CONTINUANCE

Defendant Earlene Polyak, requests a forty-five day continuance to the above styled case on the jury docket for December 26, 1984, at 9:00A.M. This request is necessary because of the extreme burden her appearance in Trial Court would place

on her health at this time. Defendant's physician is preparing a letter which will be enclosed with this request. She also encloses Affidavit as to the status of her health at this time.

Signed Earlene Polyak
Earlene Polyak
3179 Middlefield Drive
Trenton, Michigan 48183
(313)676-3364

Date: December 5, 1984

Defendant needed further medication upon arriving in Florida, and required treatment for bronchial condition and eyes. She kept calling the Court to find out if the Continuance had been granted, and finally was allowed to talk to Judge Hamilton. He ordered her to Court on December 26, 1984. Defendant submitted a Motion for Disqualification on December 20, 1984, with Affidavit. Motion follows:

IN THE CIRCUIT COURT
FOR
LAWRENCE COUNTY, TENNESSEE

BURFORD EVANS
Plaintiff

VS

Appeal No. 10647
General Sessions No. 7196

EARLENE POLYAK
Defendant

MOTION FOR DISQUALIFICATION

Defendant Earlene Polyak, move that the Honorable Jim Hamilton disqualify himself from the above styled case and all cases in the Chancery and Circuit Court of Lawrence County involving the defendant, due to the unfavorable opinions

formed without consideration of said defendant, and apparent dislike, which may result in injury to her health.

Defendant was informed by the Court Clerk that the Jury Trial which she requested to the above styled appeal would be held in April, 1985. She was informed that the Honorable Jim Hamilton scheduled this trial for December 26, 1984. Defendant requested continuance on December 7, 1984, submitted with a statement from her heart specialist, and an Affidavit as to the status of her health. On December 20, 1984, defendant contacted Judge Hamilton agains requesting Order for continuance due to further difficulties with her health, and he refused.

Judge Hamilton has never granted any orders, Motions, or petitions submitted to the Court by the defendant. He is awared of defendant's health and the fact that she will have to travel December 24 and 25, to appear in Court December 26, 1984, which will damage and injure her health and ability to defend her legal rights and claims.

By Signed Earlene Polyak
Earlene Polyak
4063 Hood Road
Lake Park, Florida 33410

Date: December 20, 1984
Notarized by Notary public

Defendant's husband obligated to come by airplane to Florida, and he and her son drove 900 miles with defendant on back seat of car on pillows to Lawrenceburg, Tennessee for trial. She had not expected to go to trial, she did not have time to look for lawyer, and obligated to try to defend by relying on oxygen and numerous medications. She was too ill to even review notes. Defendant did retain local Court Reporter for transcript of

proceedings:

— THE CIRCUIT COURT OF LAWRENCE COUNTY
LAWRENCEBURG, TENNESSEE
HON. JIM T. HAMILTON, PRESIDING

BUFORD EVANS
Plaintiff
VERSUS
EARTHENE POLYAK
Defendant

JURY TRIAL
Reporter's Partial Transcript
December 26, 1984

APPEARANCES FOR COUNSEL
For Plaintiff

Larry Douglas Brandon
320 East Main Street
Murfreesboro, Tennessee
615-890-8517 37130

For Defendant

In Propria Persona

JAMES LEONARD HOEBY
Court and Deposition Reporter
355 Holly Grove Road
Lewisburg, Tennessee 37091
(615)359-4455

Defendant ordered parts of the above transcript which describe the prejudice she believes Judge Hamilton displayed toward her to prejudice the decision maker. Judge Hamilton denied Motion to Disqualify himself over Defendant's objections and ordered her to trial for the third time without any preparation.

Evans v. Polyak pages 4 5 6

MRS. POLYAK: ... I have requested a continuance...
My doctor, Dr. Delfan Santos...

Her diagnosis is as follows: coronary artery disease

unstable angina, lung atelectasis, which affects her ability to perform even basic duties.

Patient is on several medications for her condition. Because of patient's multiple health problems and acute arthritis, we recommend the patient to seek a warmer climate.

.... When I was in Florida, Dr. Herman said, Mrs Polyak is in poor health with cardiac problems necessitating immediate medication.

I called several times to tell you that I have another doctor down there. I had another arthritic attack there. My eyes, I could not see.

I came here with --my son and my husband brought me in the back seat of a car on pillows and I have been in a motel all day, and I took oxygen, last night to be here.

And I think this is harassment to bring me here, today, in my state of health and against the Constitution, in which it says the right ... that we should not be inflicted with cruel and unusual punishment, and I think it is unusual punishment for my health to be here today.

THE COURT: All right, since we have the jury here...

MRS POLYAK: Your Honor, I have already listened to the jury in the hallway. I understand they are tired and they don't want to be here, because it's Christmas. I understand this jury has been coming in quite a while. I already feel their hostility toward being here.

THE COURT: Well,

MRS. POLYAK: and I want to put this on record.

THE COURT: Well, you've got it on record... I am going to overrule your motion asking me to disqualify myself. I'm going to overrule that motion.....

Evans v Polyak 35 36 37

Thomas Stack testifies against Defendant (former attorney. Plaintiff believes Judge prejudiced Q. Didn't I put my own notice of appeal in on November 14, 1984? You had not appealed case

MR. STACK: Your, Honor--

THE COURT: Mrs. Polyak I am going to interrupt you, here, and I'm going to make a statement to this Jury concerning that aspect, although it is irrelevant to this case. I don't know the exact dates but I will tell this jury that M. Stack appeared in my Court. He had filed a motion for a new trial ... He appeared in a Court on the day that he was to appear to argue motion, before me, seeking for me to change my mind and grant new trial.

Prior to that argument, Mrs Polyak appeared there and asked me to allow her to relieve Mr. Stack from any further representation...

I then allowed Mrs. Polyak to file her own motion, which was done in her own handwriting on a yellow piece of legal paper. I did over strenuous objection of counsel on the other side, who was Mr. Boston. I overruled his objections and allowed her to present that as her motion for a new trial. I allowed her, that day, over strenuous objections from Mr. Boston to argue that case and argue that motion on her own behalf.

Mr. Stack, I assume, was back in Pulaski, peacefully practicing law and I want you to understand that that is what he did in this case and I am not going to entertain any further questions concerning that Mrs. Polyak...

MRS POLYAK: I have one question.

THE COURT: All right. Ask it.

Q.BY MRS POLYAK: Mr. Stack did you hear Mr.Boston Object---

THE COURT: I'm not going to allow that. I'll say this and I put it in the record, Mr. Boston objected strenuously, that day....

MR STACK: Your Honor, if I may... there was a long delay in the order actually being entered.

EVANS V POLYAK

ALEX POLYAK testifies. Defendant believes jury prejudiced again by Judge Hamilton when he yelled at her for about the fifth time. Page 39 40

THE COURT: Mrs. Polyak, I hate to interrupt you but I 'm interested in his testimony concerning any knowledge he has of what the issues of the

lawsuit we are here about today, is, and that is the contract with Mr. Evans (Defendant did not have a contract with Mr. Evans).... that's what you need to ask about.

MRS POLYAK: Your Honor, I would like to establish that this man is a well-respected man. He has come to Tennessee.

THE COURT: All right I'll take it--

MRS POLYAK: He has worked in the woods--

THE COURT: Mrs. Polyak, you wait just a minute when I say something.

MRS. POLYAK: Yes sir.

THE COURT: I'll take judicial notice and I am sure he is a well-respected man.... Now if he knows anything about that contract, that's what I want to hear.

Evans v Polyak pages 52 53

JUDGE HAMILTON: (part of jury instruction)

Ladies and gentleman, you have heard a lot in this case about a partition suit. Now, I'm going to very briefly define for you, basically, what a partition suit is.

A partition suit is a suit that is brought by one or more heirs to an estate. For instance if you have four children in an estate and there is left to them in equal shares, a tract of land. If they are unable to agree upon an equal division of that land then one or more of them may file in court what is called a partition suit and ask that the land be sold and the proceeds of the sale divided equally among the heirs, and that is what a partition suit means.

One side says, "we can't divide it, equally any way except to sell it and divide the money, equally. The other side says, "No that's not true. We think we can divide the land up and give an equal portion of the land, so that is basically what a partition suit means..... (The Judge reads from a red book defining the law on agency, which the Court reporter left out of the transcript).

.....

Although desperately ill with bronchial and heart problems, Defendant was obligated to appear at this trial on short notice, without knowledge of law or any preparation and try to defend her constitutional right to an additional forty(40) acres of property the Circuit Court Clerk was holding a copy of the deed. She and her husband were required to both sign a bond. Defendant believes Judge Hamilton influenced this jury, and there are many more examples in this transcript.

On December 26, 1984, Defendant checked Notice of Nonsuit in Circuit Court Case Nos. 10611, Earlene Folyak v William Boston, Boston Bates & Felt, and 10612, Earlene Folyak v Thomas Stack, Henry Henry & Stack, and found what appears to be objections to the sale of her property in Chancery Court on Circuit Court Cases with orders to pay costs case with execution.

Defendant submitted Notice of Nonsuit of Nonsuit on August 31, 1984, and she was finally able to contact Judge Hamilton on October 31, 1984. In this telephone conversation, Judge Hamilton stated that he had signed an order dismissing all of her cases in Lawrence County;

CIRCUIT COURT OF LAWRENCE COUNTY, TENNESSEE

EARLENE POLYAK
Plaintiff

VS

CIVIL ACTION NO. 10611

WILLIAM BOSTON
BOSTON BATES & HOLT

NOTICE OF NONSUIT

Plaintiff Earlene Polyak, pursuant to Rule 41.01, Tennessee Rules of Appellate Procedure, hereby give notice of nonsuit without prejudice in Civil Action No. 10611, filed against William Boston Boston Bates & Holt on July 27, 1984, to Plaintiff refiling cause of Action.

Date: August 31, 1984

Signed Earlene Polyak
Earlene Polyak
3179 Middlefield Drive
Trenton, Michigan 48183

IN THE CIRCUIT COURT OF LAWRENCE COUNTY, TENNESSEE

EARLENE POLYAK
Plaintiff

VS

No. 10611

WILLIAM BOSTON
BOSTON BATES & HOLT

ORDER

This cause came on to be heard and was heard on the 9th day of October, 1984, before the Honorable Jim T. Hamilton, Circuit Judge on motion of the Plaintiff for this Court to enjoin the sale of certain real estate, which was recently ordered sold from a partition suit which was heard in Chancery court in Lawrence County, Tennessee. The chancery Court heard proof, ordered the real estate sold for partition. The plaintiff appealed this decision to the Court of Civil Appeals where the decision of Chancery was upheld. The plaintiff then petitioned the Supreme Court of Tennessee for Certiorari, and this was denied.

It is therefore Ordered, by this Court: that the motion of the plaintiff for this Court to enjoin the sale of this real estate for partition be dismissed. It is further ordered that the cost of this case be adjudicated against the defendant for which execution may issue if necessary.

This the 9th day of October, 1984.

Signed Jim T. Hamilton
Circuit Judge

APPROVED FOR ENTRY:

EARLENE POLYAK PLAINTIFF

WILLIAM BOSTON DEFENDANT

II) CIRCUIT COURT OF LAWRENCE COUNTY, TENNESSEE

EARLENE POLYAK
Plaintiff

VS CIVIL ACTION NO. 10612

THOMAS STACK
HENRY HENRY & STACK
Defendant

NOTICE OF NONSUIT

Plaintiff Earlene Polyak, pursuant to Rule 41.01, Tennessee Rules of Civil Procedure, hereby gives notice of nonsuit without prejudice, in Civil Action No. 10612, filed against Thomas Stack Henry Henry & Stack on July 27, 1984, to Plaintiff refiling of cause of action.

Date: August 31, 1984.

Signed Earlene Polyak
Earlene Polyak
3179 Middlefield Drive
Trenton, Michigan 48183

IN THE CIRCUIT COURT OF LAWRENCE COUNTY, TENNESSEE

EARLENE POLYAK
Plaintiff

VS No. 10612

THOMAS STACK
HENRY HENRY & STACK

O R D E R

This cause came on to be heard and was heard

on the 9th day of October 1984, before the Honorable Jim T. Hamilton, Circuit Judge on the Motion of the Plaintiff for this Court to enjoin the sale of certain real estate, which was recently ordered sold from a partition suit which was heard in the Chancery Court for Lawrence County, Tennessee.

The Chancery Court heard proof, and ordered the real estate sold for partition. The plaintiff appealed this decision to the Court of Civil Appeals, where the decision of the Chancery was upheld. The plaintiff then petitioned the Supreme Court of Tennessee for Certiorari, and this was denied.

It is therefore Ordered, by this Court that the Motion of the plaintiff for this Court to enjoin the sale of this real estate for partition be dismissed. It is further Ordered that the cost of this case be adjudicated against the defendant for execution may issue if necessary.

Signed Jim T. Hamilton
CIRCUIT JUDGE

APPROVED FOR ENTRY:

EARLENE POLYAK PLAINTIFF

THOMAS STACK
HENRY HENRY and STACK

Defendant was not in this Court on October 9, 1984. She did not arrive to appeal Case No. 10647, Buford Evans v Earlene Polyak until about 1:30 P.M. on October 10, 1984.

On February 4, 1985, Defendant received the transcript of the Proceedings in Case No. 10647 Buford Evans V. Earlene Polyak. Judge Hamilton did not enter the judgment in the Circuit Court to be appealed to the Court of Appeals of Tennessee.

On May 3, 1985, the Court of Appeals denied
Application for Permission to Appeal.

COURT OF APPEALS OF TENNESSEE
MIDDLE SECTION AT NASHVILLE

RUFORD EVANS
Plaintiff-Appellee

EARLENE POLYAK
Defendant-Appellant

O R D E R

The defendant, Earlene Polyak, has filed with this Court an application for extraordinary appeal. Said application complains of various actions of the Trial Judge during a trial, but does not designate, describe or exhibit a copy of any order or judgment of the Trial Judge.

There is no showing of why an appeal as of right or appeal by permission is not available to applicant.

It is therefore ordered that said application for extraordinary appeal be denied.

ENTER MAY 3, 1985

Signed by Judges

HENRY F TODD
PRESIDING JUDGE

SAMUEL L. LEWIS

BEN H. CANTRELL

WILLIAM C. KOCH JR.

Application for Rehear of Application for Permission to Appeal was denied on May 17, 1985 by the above named Judges of the Court of Appeals of Tennessee.

Application for Permission to Appeal to the Supreme Court of Tennessee was denied, ^{8/26/85} but Judge

Hamilton signed Judgment on August 7, and Amended Judgment on August 22, 1985.

STATE OF TENNESSEE
CIRCUIT COURT OF LAWRENCE COUNTY

In the Circuit Court for Lawrence County, Tennessee
Civil Action No. 10647

BUFORD EVANS & SONS
Plaintiffs

v

NOTICE OF APPEAL

EARLENE POLYAK
Plaintiff

Notice is hereby given that Earlene Polyak, defendant above named, hereby appeals to the COURT OF APPEALS OF TENNESSEE, from the final judgment entered in this action on the 7th day of August 1985, and the amended judgment signed on the 22nd day of August 1985, by the Honorable Jim Hamilton.

Signed Earlene Polyak
Earlene Polyak
3179 Middlefield Drive
Trenton, Michigan 48183
(313) 676-3364

Date: August 29, 1985

Defendant submitted parts of the Record to be included on Appeal and Issues to be presented with certificate of service. Issues :

1. Whether Judgment should be set aside as a result of Judge Hamilton's treatment of Appellant before the jury, prejudicing the decision maker and the judicial process.

2. Whether Judge Hamilton should have obligated Appellant to defend herself without counsel while acutely ill and against letters of physicians verifying illness, and Judgment should be set aside.

3. Whether Appellant obligated to pay Buford

Evans for measuring property that had already been appraised, when he did not have her permission and she did not have knowledge of his measuring her property, and no contract with him, and decision should be set aside.

4. Whether Buford Evans possessed valid Surveyor's License and measurement of property according to scale, accurate description of land, and decision should be set aside.

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing description of papers, parts of transcript, and issues to be appealed has been mailed to all parties of interest in this pleading.

On September 9, 1985

Signed Earlene Polyak

COPY MAILED TO:

Mr. Larry Brandon

Attorney at law

Murfreesboro, Tennessee 37133

Mr. Ramsey Leathers Clerk

100 Supreme Court Building

Nashville, Tennessee 37219

COURT OF APPEALS
STATE OF TENNESSEE
NASHVILLE 37219

September 9, 1985

Dear Counsel:

RE: BUFORD EVANS

VS.

EARLENE POLYAK

We are returning herewith the copy of the notice of appeal forwarded to this office in the above case.

An amendment to Rule 5(a) of the Tennessee Rules of Appellate Procedure effective August 15, 1984, deleted the requirement that a copy of the notice of appeal be filed with the clerk of the appellate court.

Signed Ramsey Leathers
Ramsey Leathers, Clerk

Letter closing case:

October 1, 1985

Mrs. Earlene Polyak
3179 Middlefield Drive
Trenton, Michigan 48183

RE: Buford Evans vs
Earlene Polyak
Civil Action #10647

Dear Mrs. Polyak:

We received an Order which was entered on September 30, 1985, denying your Petition to Rehear the Denial of the application for permission to appeal.

We therefore consider this case closed until we hear differently from the Supreme Court.

Sincerely yours,
Signed Gerald Wilson
Circuit Court Clerk
cc. Judge Jim T. Hamilton
Judge James L. Weatherford
Buford Evans
Larry D. Brandon

Defendant tried to explain that application to appeal should not effect appeal as a right, and that notice of appeal was properly before the Court. Judge Hamilton denied request for restraining order against the sale of property.

IN THE CIRCUIT COURT OF LAWRENCE COUNTY, TENN

BUFORD EVANS & SONS
Plaintiff

vs

CIVIL ACTION NO.10647

EARLENE POLYAK
Defendant

O R D E R

This case came on to be heard and was heard on the 17th day of October, 1985, before the

Honorable Jim T. Hamilton, Circuit Judge.

It appeared to the court that the Motion of the Defendant is not well taken and should not be granted.

It is therefore ORDERED that the Motion for a Restraining Order is hereby denied.

This 17th day of October, 1985.

Signed Jim T. Hamilton
Jim T. Hamilton
CIRCUIT JUDGE

Defendant submitted a motion to forward the records for appeal in Case No. 10647, to the Circuit Court of Lawrence County, Tennessee on November 1, 1985. Judge Hamilton denied this motion:

IN THE CIRCUIT COURT OF LAWRENCE COUNTY, TENN
BUFORD EVANS & SONS
vs
EARLENE POLYAK
CIVIL ACTION NO: 10647

O R D E R

This case came on to be heard and was heard before the Honorable Jim T. Hamilton, on plaintiffs Motion to Forward records of this case from the Circuit Court of Lawrence County, Tennessee to the Court of Civil Appeals.

IT IS ORDERED by the Court that Plaintiff's Motion be denied.

This 7th day of November, 1985.

Signed Jim T. Hamilton
JIM T. HAMILTON
CIRCUIT JUDGE
PART 1

APPENDIX B

In the United States District Court, Middle District of Tennessee.

Buford Evans & Sons, Plaintiffs v. Earlene Polyak, Defendant. Case No. 1:85-0120

Petition for Removal filed on November 12, 1985, with copies of proceedings, issues, parts of the record, Request for restraining order against sale of property copy of partial transcript of proceedings, Notice of petition for removal to Mr. Gerald Wilson Circuit Court of Lawrence County, and to Mr. Larry Brandon, Attorney for Mr. Evans, and Removal Bond. Jury Trial Requested.

Bond: Earlene Polyak was not allowed to appeal to Circuit Court by Mr. Gerald Wilson, Circuit Court Clerk, until she went to County Court and brought copy of deed to additional forty(40) acres to him on October 10, 1984. Mr. Alex Polyak was also required to sign Bond on December 26, 1984, Case No. 10647.

Dismissed: November 27, 1985, within 20 days without oral argument or any kind of hearing.

Presiding: The Honorable Thomas A Wiseman Jr.

SUMMARY

The United States District Court was petitioned

for removal of the above styled civil action on the ground that Petitioner has been denied by state court proceedings her rights secured and guaranteed to her by laws providing for equal civil rights if citizens of the United States by the Fifth and Fourteenth Amendments. Such denial continues to occur in that Petitioner has been denied due process and equal treatment and the constitutional right to a fair trial and appeal as a right in the Circuit court of Lawrence County. The deprivation of her right to her property is irreparable damage and loss of a right to never be regained to her property.

After The Honorable Jim Hamilton denied Defendant's motion to forward the records in this case to the Court of Appeals of Tennessee, she filed a complaint against Jim Hamilton, Individually and in his judicial capacity, Jointly and Severally and the Circuit Court of Lawrence County, Tennessee, Case No. 1:85-0116, on November 8, 1985. She submitted the petition to remove Buford Evans & Sons Case No. 10647, from the Circuit Court of Lawrence County, Tennessee and to join to Case against Jim Hamilton and Circuit Court of Lawrence

County pursuant to 28 USC 1441(c). District Court
Case No. 1:85-0120, Buford Evans & Sons v Earlene
Polyak was filed on November 12, 1985.

CIVIL COVER SHEET

Plaintiffs
BUFORD EVANS & SONS
233 East Gaines St.
P.O. Box 190
Lawrenceburg, Tennessee
38464

Defendants
EARLENE POLYAK
3179 Middlefield Drive
Trenton, Michigan 48183

Attorney
Larry Brandon
P.O. Box 5065 Uptown Station
Murfreesboro, Tennessee 37133

CAUSE OF ACTION

Deprivation of Civil and Constitutional Rights
provided in the Fifth and Fourteenth Amendments

(Reverse Side)

Date 11/8/85

The above case is being petitioned for removal
from the Circuit Court in Lawrence County, Tennessee
in conjunction with Complaint against Jim T.
Hamilton, Individually and in his judicial capacity,
Jointly and severally, and the Circuit Court of
Lawrence County, which was submitted to this Court
on November 7, 1985.

Appellant alleges that her Civil and Constitu-
tional Rights as provided by the Fifth and Fourteenth
Amendments have been violated as the result of
denial of right to appeal as stated in Tennessee
State Laws, and the Federal Laws of the United States.

CAUSE OF ACTION

Appellant believes that the denial of right
to appeal is deprivation of Civil and Constitutional
Rights guaranteed by the Fifth and Fourteenth
Amendments.

Complaint No. 1:85-0116 was dismissed within
five days of filing on November 13, 1985, follows:

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

Received for Entry
November 13, 1985

EARLENE POLYAK

VS

JIM T. HAMILTON, Individually
and in his judicial capacity as
Circuit Judge, Jointly and severally
and the CIRCUIT COURT OF LAWRENCE
COUNTY

ORDER

For reasons stated in the Memorandum
contemporaneously filed herewith, the application
for extraordinary relief is denied and the case is
dismissed on the Court's own motion. No process
shall issue but a copy of this memorandum will be
mailed to defendants.

Plaintiff Polyak is expressly enjoined from
filing any further actions in this Court regarding
partition for sale of property in Lawrence County
without express permission of this Court.

Signed Thomas A Wiseman

THOMAS A. WISEMAN JR.
CHIEF JUDGE

The above styled case was dismissed within
five days including a week end after filing with
out oral argument or any kind of hearing. Judge
wiseman issued an injunction against Defendant
filing further cases in the United States District
Court.

Case No. 1:85-0120, Buford Evans v Earlene
was dismissed within 14 days after filing with
out oral argument or any kind of hearing. Defendant
was afraid to submit Petition to Rehear, wrote letters

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

BUFORD EVANS & SONS

ENTERED NOV 26, 1985

VS

Civil Actoin No.

EARLENE POLYAK

1:85-0120

ORDER

Before this Court is the pro se Petition for removal of suit for property survey, filed by Earlene Polyak. This is the fifth(fourth) under different headings but all delaing with Mrs Polyak dissatisfaction with a state court action in Lawrence County in a partition suit brought by a surveyor to collect his fees. The Court has dismissed prior actions, and has enjioned Mrs Polyak from attempting to oigitate this matter in this Court, and from filing any further suits arising out of the partition suit.

This case is another mistaken effort on Mrs. Polyak's part. Because it was lodged before the Court issued its injunction, it is not subject thereto.

This case is not removable for several reasons
1. 28 USC 1446(b) requires petition for removal to be filed within 30 days after receipt of the defendant of the initial pleading set forth the claim for relief upon which processing is based.

Suit was filed in Lawrence County General Sessions Court, and Mrs Polyak encloses a letter to her dated August 20, 1984, from the Secretary of the State notifying her of suit with an appearance of September 12, 1985, and is therefore untimely over a year.

2. The suit for a debt allegedly due Evans in the amount of \$475.00. Jurisdiction of this Court for removal is governed by 28 USC 1441(a) cases in which this court would have original jurisdiction.

Although Mr. Evans suit against Mrs Polyak is between citizen's of different states the amount in controversy is the amount Mr. Evans sued for \$475.00 not amount Mrs Polyak claims to have lost in adverse judgment of the court in the partition suit. A Counter-claim cannot supply the necessary prerequisite of \$1000.00 amount in controversy 28 USC 1332.

3. The petition must be verified. It is not.

4. The petition must contain a copy of the process and pleadings served upon her 28 USC 1446, It does not.

5. The petition must be accompanied by a bond with good surety . There is not surety on Mrs Polyak

bond.

This petition is dismissed and the case is remanded to the Circuit Court of Lawrence County. Mrs Polyak is cautioned to seek legal advice before filing further frivolous suits.

Signed Thomas A. Wiseman Jr
THOMAS A WISEMAN JR
CHIEF JUDGE

The above case is only the fourt one filed in the District Court in an attempt to seek divversity\ of citizenship and the protection from local political influence and prejudice. It appears the same the same prejudice found in the State Court. Defendant found that htis case could be appealed despite remand under 1443(1) and 1443(2). It is her opinion that the invalid map which she believes was composed at her expense for the sale of her property at Public Auction would allow waive of thime under 60.02(b) FRCivP. Case No. 10611, Earlene Polyak v William Boston, Boston Bates & Holt(D.C. 3-85X-105), which denied filing, No. 10612, Earlene Polyak v Thomas Stack Henry Henry & Stack(D. C. No. 1:85-0125, was filed by Judge Wiseman after finding allegations of negligence and malfeasance, and all were joined to

United States District No. 1:85 v. Jim Hamilton 28
USC 1441(c).

NOTICE OF APPEAL TO A COURT OF
APPEALS FROM AN ORDER
OF A DISTRICT COURT

United States District Court for the Middle District
of Tennessee File No.
1:85-0120

EDFORD EVANS & SONS
Plaintiff

FILED DEC 9, 1985

v. NOTICE OF APPEAL

EARLENE POLYAK
Defendant

Notice is hereby given that Defendant above
named appeals to the the United States Court of
appeals for the Sixth circuit from the final
order denying removal of the above-entitled civil
action from the Circuit Court of Lawrence County
on the ground that she has been denied by such
State Court proceedings her rights guaranteed to
her by the law providing for equal civil rights of
citizens of the united States, and such denial
continues to occur in that she has been denied
appeal in the Circuit Court and the District
Court has denied right to be heard on November 26,
and entered into the record on November 27, 1985.

Date: 12/6/85

Signed Earlene Polyak
(Add 1 Photo. NY)

APPENDIX C

In the United States Court of Appeals for the Sixth Circuit.

Buford Evans & Sons, Plaintiff-Appellee v. Earlene Folyak, Defendant- Appellant Case No.85-6315. District Court No. 1:85-0120.

Notice of Appeal filed December 9, 1985.

Appeal dismissed after extension of time to prepare appeal granted due to Appellant's health problems, and after conversation between Case Supervisor and Appellee's lawyer.

Letter from Mr. Larry Brandon dated February 21, 1986, to Mrs. Yvonne Henderson.

Appeal dismissed before allowing brief and Appendix on March 7, 1986.

Rehear denied on May 12, 1986.

Motion to stay mandate denied on June 13, 1986.

Before: KENNEDY, CONTIE and RYAN, Circuit Judges.

Notice of Appeal to the Supreme Court of the United States received by the United States Court of Appeals on June 6, 1986.

Appellant appealed the final order dismissing the petition to remove the above case from the Circuit Court of Lawrence County on the ground that she had been denied by State Court proceedings her rights guaranteed to her by the laws providing for equal civil rights of citizens of the United States, and such denial continues to occur in that she had been denied appeal as a right to this case, which was properly before the Court, by Judge Hamilton denying the order to forward the record to the Court of Appeals of Tennessee, on November 7, 1985.

Appellant placed Complaint No. 1:85-0116, against Judge Hamilton and joined this case No. 1:85-0120 by 28 USC 1441(c) ... is joined with one or more claims or causes of action, the entire case may be removed to District Court. She had already been granted a thirty day extension of time due to illness, had just mailed briefs on case No. 1:85-0116, and was starting the brief in this case when she received a copy of a letter confirming a conversation between Mrs Yvonne Henderson Case Supervisor, and Mr. Evans lawyer, Mr. Larry Brandon, and dismissal of the case

- 43 -

Law Office of

LARRY DOUGLAS BRANDON
528 North Walnut Street
Murfreesboro, Tennessee 37133-5065
(615) 890-8517

February 21, 1986

Mrs Yvonne Henderson
United States Court of Appeals
Sixth Circuit
U.S. Post Office & Courthouse Building
Cincinnati, Ohio 45202

Re: Case No 85-6135
Buford Evans et al
vs Earlene Polyak
District Court No.
85-0120

Dear Mrs Henderson:

This letter will confirm our conversation of Friday February 21, 1986 whereby I indicated that I have no intention in participating in the appeal of Mrs. Polyak to the United States Court of Appeals. Please enter this letter for the record. Thanks for your cooperation. I am,

Sincerely,
Larry D. Brandon

cc: Earlene Polyak
4063 Hood Road
Lake Park, Florida 33418

Mr. Buford Evans
P.O. Box 190
Lawrenceburg, Tennessee 38464

When Appellant stated that Mr. Brandon had not been relieved as according to Court rules, she stated that they were not going to force any attorney to appeal case. Prior to this, Mrs. Henderson had stated that appeal could not be consolidated with No. 1:85-0116, and dismissal of this case followed

in disregard of Local Rule (8) case dismissed
after 10 days of filing without motion being
served on Appellant as follows:

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EDFORS EVANS & SONS MAR 7 1986
Plaintiff- Appellees

VS

O R D E R

EARLENE POLYAK

Defendant-Appellant

BEFORE: KENNEDY, CONTIE and RYAN, Circuit Judges

This appeal has been referred to this panel
pursuant to Rule 9(a) Sixth Circuit(docket control)

Appellant has appealed from the November 26,
1985 order remanding the removed action to state
court. The action was remanded because removal
petition did not comply with 28 USC 1446 because
it was not filed within 30 days, the amount in
controversy was less than \$10000.00 the petition
was not verified, the required state court pleading
were not filed and no bond with surety was filed.
This was a remand pursuant to 1447(c) which is not
reviewable or otherwise. In *Re Romulus Community
Schools* 729 F 2d 431(6th Cir. 1984). The Court
is without jurisdiction to entertain appeal.

It is ordered that the appeal be and hereby



by the Court. Mandate was issued on first order of dismissal. She learned that District Court did not forward record containing materials submitted as evidence with petition. It si stated on the form returned from the Court of Appeals to the District Court Clerk that the record was never forwarded in this case.

No. 85-6135

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED MAY 12, 1986

FORD EVANS & SONS
Plaintiff- Appellees

O R D E R

MARLENE POLYAK
Defendants- Appellants

BEFORE: KENNEDY CONTIE and RYAN, Circuit Judges.

The within matter came on to for hearing on the petition for rehearing submitted by appellant. The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition for rehearing and concludes that the issues raised for the petition fot rehearing were fully considered upon original submission and . . . sion of the case. Accordingly, the petition for rehearing is denied. Signed John P. Hehman

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
Civil Appeal Pre-Argument Statement

BUFORD EVANS & SONS	District	Judge
Plaintiff/Appellee	Middle	Wiseman
vs	Date	
	Appeal filed	cross
EARLENE POLYAK	12/10/85	Appeal
Defendant/Appellant		X yes

Appellant Earlene Polyak (313) 676-3364
3179 Middlefield Dr.
Trenton, Mi. 48183

Appellee Larry Brandon
P.O. Box 5065
Murfreesboro, Tennessee (305) 672-3564
51333

X	Damages
Denial of right	
to appeal	\$ 10475.00
	and costs

Nature of Suit

X Diversity

X Real Property

Note:

This petition was submitted as a cross-appeal. Mr Evans surveyed Appellant's property without her knowledge or permission, and she is asking damages for costs and inconveniences, and pain and suffering, caused by his unjustly filing complaint against the wrong person.

UNITED STATES DISTRICT COURT
-MIDDLE DISTRICT OF TENNESSEE
NASHVILLE 37203

April 30, 1986

Mr. John F. Hehman, Clerk
United States Court of Appeals
for the Sixth Circuit
U.S.P.O. & Courthouse Building
Cincinnati, Ohio 45202

Re: Case No. 86-5462, Mrs. Earlene Polyak
Petition for Writ of Mandamus

Dear Mr. Hehman,

This petition complains of the action of the undersigned in failing to file and issue process on a complaint of Mrs Polyak against William E. Boston. I have not previously acted upon this complaint because I was considering the issuance of a show cause order upon Mrs. Polyak to show cause why she should not be held in contempt of the previous order of November 13, 1985, whereby Mrs Polyak was enjoined from further filing any further suits in this court arising out of the partition sale of her property in Lawrence County. That order was entered because of the previous filings of Mrs Polyak against various members in this Court, all stating essentially the same facts, and all arising out of state court proceedings which had been fully litigated and adjudicated. I felt that Mrs Polyak was abusing the process of the courts. My decision in that regard is reinforced by the petitions for writ of mandamus received today. She has taken an inordinate amount of this court's time to the detriment of other litigants and should be severely sanctioned therefor.

I have rescued myself from further consideration of this or any matters concerning Mrs. Polyak. A copy of that order is enclosed. Please consider this my response to the petition filed herein.

Yours very truly,

Thomas A. Wiseman Jr.

cc: Mrs Earlene Polyak

No. 85-6134

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED AUG 15, 1986

EARLENE POLYAK

Plaintiff-Appellant

V

O R D E R

JIM T. HAMILTON INDIVIDUALLY AND
IN HIS JUDICIAL CAPACITY AS
CIRCUIT JUDGE, AND CIRCUIT COURT
OF LAWRENCE COUNTY

Defendants- appellees

BEFORE: ENGEL And GUY, Circuit Judges and
SUHRHEINCH, District Judge,

The plaintiff appeals the order sua sponte
dismissing her pro se civil rights action against
a state judge. This appeal was referred to this
panel pursuant to Rule 9(a), Rules of the Sixth
Circuit(docket control). Upon examination of the
record and briefs, this panel unanimously agree
that oral argument is not needed Rule 34(a), Federal
Rules of Appellate Procedure.

The plaintiff filed third action under 42 USC
1983,(plaintiff did not give number as she is not
a lawyer, and number given by panel in docket control)
asserting that defendant Judge violated her civil
rights by his handling of litigation to which
plaintiff was a party. For relief, she sought damages
and an injunction prohibiting the enforcement of an

for a partition sale entered by the defendant as a result of state litigation(pending appeal). In dismissing the action sua sponte, the district Court held the defendant immune from damages under 1983 because of absolute judicial immunity. Stumpt v Sparkman, 435 US 349(1987). It is also found the request for injunctive relief varred by the doctrine of res judicata because of prior litigation in both the state court and district court. The Court concludes the case was frivolous malicious and harassing(sic) and that it had the inherent power to prevent abuse of its process and prevent injustice. In light of prior actions filed by plaintiff, the court enjoined the plaintiff from filing without permission any future without court actions arising from state litigation. The plaintiff filed this appeal from that portion of the order dismissing the underlying action.

For the reasons stated by the district court, we find no error in the dismissal of the plaintiff's action. We observe that 1983 cannot be used to gain a review of an unfavorable state court decision properly rendered within the state court's jurisdiction and expertise. See Johns v Supreme

Court of Ohio, 753 F 2d 524 527 (6th Cir) cert denied.

US 106 S Ct 79 88 1 Ed 2d 65 (1985) Tonti v

Metropolis 656 F 2d 212 21 (6th Cir. 1981) We also

note that state courts per se are not persons

susceptible to suit under 1983. Coper Smith v

Supreme Court of Colorado, 465 F 2d 993, 10th Cir

1972. (No jury trial to determine liability)

It is therefore ordered that the district
court's order of November 13, 1985, dismissing the
plaintiff's action be nad hereby affirmed Rule 9(a)
(2) Rules of the Sixth Circuit. (docket control)

ENTERED BY ORDER OF THE COURT

Signed John P. Hehman
Clerk

On the 9 day of September, 1986.

Certificate of Service

I certify that a true and exact copy of this
appendix has been amiled fy First Class Mail to
Mr. Larry Brandon, Mufreesboro, Tennessee 37133.

Earlene Polyak
3179 Middlefield Drive
Trenton, Michigan 48183
(313) 676-3364